

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the
Commission's Own Motion into the
Operations and Practices of Pacific Gas and
Electric Company, Regarding the Gas
Explosion and Fire on December 24, 2008
in Rancho Cordova, California.

I.10-11-013
(Filed November 19, 2010)

**JOINT MOTION OF CONSUMER PROTECTION AND
SAFETY DIVISION AND PACIFIC GAS AND ELECTRIC
COMPANY FOR APPROVAL OF STIPULATION TO
ORDER RESOLVING INVESTIGATION**

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The Consumer Protection and Safety Division of the California Public Utilities Commission (respectively, "CPSD" and the "Commission") and Pacific Gas and Electric Company ("PG&E") jointly move the Commission to approve the Stipulation to Order Resolving Investigation ("Stipulation") filed herewith.

I. INTRODUCTION AND SUMMARY OF STIPULATION

The Stipulation reflects the mutual belief of CPSD and PG&E that it is a fair resolution of all the issues in this Order Instituting Investigation ("OII"), and that their resources can be better devoted to other matters rather than litigating this case.

If approved by the Commission, the Stipulation will resolve the OII. The OII arose out of a December 24, 2008 accident in which natural gas leaking from a PG&E distribution pipeline resulted in an explosion and fire at 10708 Pauite Way, Rancho Cordova, California. One person died and others were injured.

In the Stipulation, PG&E agrees to pay a \$26 million penalty and admits violations of pipeline safety regulations. The acknowledged violations are supported by a series of factual stipulations (Attachment A to the Stipulation). The violations PG&E admits are as follows:

- the September 2006 installation of pipe at 10708 Paiute Way was pipe that was not authorized for gas service in violation of 49 C.F.R. §§ 192.59(a)(1) and 192.13(c);
- the pipe used in the repair at 10708 Paiute Way was not pressure tested in the manner required by law, prior to reinstating gas service, in violation of 49 C.F.R. § 192.503(a)(1);
- the October 2006 installation of gas pipe with wall thickness below specifications in Elk Grove violated 49 C.F.R. § 192.59(a)(1);
- PG&E failed to follow its internal procedures with respect to its October 2006 discovery of the installation of gas pipe with wall thickness below specifications in Elk Grove, in violation of 49 C.F.R. § 192.13(c); and
- not administering drug and alcohol tests after the Rancho Cordova explosion to all employees whose performance on December 24, 2008, under the circumstances presented, could not be completely discounted as a contributing factor to the accident, was in violation of 49 C.F.R. §§ 199.105(b) and 199.225(a).

In addition, PG&E admits that its response to the neighborhood resident's December 24, 2008 telephone call reporting an outdoor gas leak odor on Pauite Way was unreasonably delayed and not effective.

Finally, PG&E agrees to reimburse CPSD's investigation and proceeding costs for the OII. The Stipulation provides that PG&E will not seek to recover any portion of the penalty or CPSD costs in rates.

As shown in more detail below, the Stipulation is reasonable in light of the record, consistent with law, and in the public interest. CPSD and PG&E request that the Commission approve the Stipulation without modification and close the OII.

II. FACTUAL BACKGROUND

Immediately after the accident, the National Transportation Safety Board ("NTSB") began to investigate. PG&E and CPSD participated in the NTSB investigation as party participants. The NTSB concluded its investigation on May 18, 2010, with the issuance of its

Pipeline Accident Brief on the accident. The NTSB concluded that the probable cause of the accident was the use of a section of unmarked and out-of-specification polyethylene pipe with inadequate wall thickness that allowed gas to leak from the mechanical coupling installed during a repair on September 21, 2006. The NTSB found that a 2-hour 47-minute delay in the arrival of PG&E's crew to begin response activities was a contributing factor.

On November 10, 2010, CPSD issued its Incident Investigation Report on the accident. CPSD's report alleges that PG&E violated various provisions of Title 49, Part 192 of the Code of Federal Regulations and Public Utilities Code § 451 in the following respects: (a) installation of pipe at 10708 Pauite Way that was not approved for gas usage; (b) failure to take appropriate corrective actions after the discovery that out-of-tolerance pipe had been installed in Elk Grove in October 2006; (c) failure to take immediate actions to safeguard life and property on December 24, 2008; (d) inadequate emergency response plan, practices and procedures and failure to coordinate with fire, police and other agencies in responding to the emergency on December 24, 2008; (e) failure to train appropriate operating personnel in emergency procedures; and (f) not administering drug and alcohol tests to all employees involved in responding to the accident.

The Commission issued the OII on November 19, 2010, directing PG&E to respond to the NTSB and CPSD reports and to provide related documentation.

On February 17, 2011, PG&E submitted its testimony and exhibits responding to the OII. In its testimony, PG&E stated, "The tragic explosion and fire on December 24, 2008 at 10708 Pauite Way, Rancho Cordova, resulted from a series of failures by PG&E employees to follow prescribed procedures, failures for which PG&E takes full responsibility." While it so acknowledged these matters, PG&E has disputed other of CPSD's allegations, including the

assertion that PG&E's Gas Emergency Plan was inadequate and did not comply with applicable regulations.

III. THE COMMISSION SHOULD APPROVE THE STIPULATION.

The Stipulation is a stipulation of facts and an admission of violations. Although not directly applicable to the stipulation, Rule 12.1(d) of the Commission's Rules of Practice and Procedure supplies a useful framework for evaluating the Stipulation. That rule provides that the Commission will not approve a settlement unless it is reasonable in light of the record, consistent with law, and in the public interest. As discussed below, the stipulation satisfies each of these criteria.

The Stipulation is consistent with the Commission's policy that provides for stipulations between the Commission's enforcement staff and a utility where staff has alleged a violation of the Commission's rules or orders. The parties that can most properly resolve these types of allegations are the enforcement staff and the utility that has been charged with a violation of Commission rules.

A. The Stipulation Is Reasonable In Light Of The Record.

In this case, the Commission has a nearly complete evidentiary record on which to assess the Stipulation. Both the NTSB and CPSD prepared reports on the Rancho Cordova accident, and those reports and CPSD's supporting documents are in the record. PG&E fully responded to the two reports and the directives of the OII, and that material is also before the Commission.

After having acknowledged its employees' errors and its responsibility in its own report, in the Stipulation, PG&E goes one step further and admits that various of those actions amount to violations of pipeline safety regulations. These admissions are supported by the factual stipulations in Attachment A to the Stipulation and the reports and testimony already submitted.

In addition, the penalty agreed to by CPSD and PG&E is reasonable. It amounts to one of the largest penalties ever assessed by the Commission. See <http://www.cpuc.ca.gov/NR/rdonlyres/87394981-CE5B-4701-A5B1-6F69DE627D2F/0/FinesandRestitution.pdf>.

B. The Stipulation Is Consistent With Law.

The Stipulation contains factual stipulations as well as specific admissions of violations of pipeline safety regulations. The amount of the penalty – \$26 million – is commensurate with the admitted violations.

C. The Stipulation Is In The Public Interest.

The Commission has a “long-standing policy favoring settlements.” *Application of California-American Water Company*, D.10-06-038, 2010 Cal. PUC LEXIS 224 at *46. Although this is not a “settlement,” the same policy favors the adoption of the Stipulation. As the Commission has reiterated over the years, the “Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.” *Application of Southern California Edison Company*, D.10-12-035, 2010 Cal. PUC LEXIS 467 at *87; see also *Order Instituting Rulemaking on the Commission’s Own Motion to address the issue of customers electric and natural gas service disconnection*, D.10-12-051, 2010 Cal. PUC LEXIS 556 at *55 (Commission decisions “express the strong public policy favoring settlement of disputes if they are fair and reasonable”); *Application of Golden State Water Co.*, D.10-11-035, 2010 Cal. PUC LEXIS 495 at *17 (the Commission’s “long-standing policy favoring settlements . . . reduces litigation expenses, conserves scarce Commission resources . . .”); *Application of Pacific Gas and Electric Co.*, D.10-11-011, 2010

Cal. PUC LEXIS 533 at *50 (“There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation”).

The Stipulation is consonant with the Commission’s policy. In the Stipulation, PG&E acknowledges that past actions did not meet appropriate safety standards and violated pipeline safety regulations. It agrees to pay a very substantial penalty as a consequence of those violations.

Both CPSD and PG&E recognize that, if they were to fully litigate the OII, the result might be different from that provided for by the Stipulation. But, each believes the result achieved by the Stipulation is just and reasonable under the circumstances and the possibility of a litigated outcome that might be more favorable to its litigation position is not worth the resources, expense and risk of a worse outcome in the litigation process.

IV. CONCLUSION

The Stipulation is the culmination of more than two years’ work by CPSD and the compilation of a nearly complete evidentiary record. With this substantial basis, CPSD and PG&E agree that the Stipulation – with its \$26 million penalty and admissions of violations – represents a fair resolution of all issues raised by this enforcement action. The Stipulation is

reasonable in light of the record, consistent with law, and in the public interest. The Commission should approve the Stipulation without modification and close the OII.

Respectfully submitted,

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